

**MINUTES OF THE TOWN OF CHESHIRE WATER POLLUTION CONTROL
AUTHORITY PUBLIC HEARING HELD ON WEDNESDAY, DECEMBER 21, 2016 AT
7:00 P.M. IN COUNCIL CHAMBERS, TOWN HALL, 85 SOUTH MAIN STREET,
CHESHIRE CT 06410.**

Present

John Perrotti, Chairman; Matthew Bowman, Steve Carroll, Ken Cianci, Mark Kasinskas, Tom Scannell, James Sima.

Staff: Walter Gancarz, Town Engineer; Attorney Joseph B. Schwartz, Murtha & Cullina.

Guest: Don Chelton, AECOM.

Public Hearing Subject Matter

JOINT APPLICATION OF EARL J. KURTZ, JR.

AND FRANK LONGO SR.

SEWER EXTENSION AT TALMADGE AND
WALLINGFOD ROADS.

Chairman Perrotti called the public hearing to order at 7:01 p.m.

Chairman Perrotti read the safety notice.

1. PLEDGE OF ALLEGIANCE

The Group Pledged Allegiance to the Flag

2. ROLL CALL

The clerk called the roll and a quorum was determined to be present.

3. EXPLANATION OF HEARING PROCEDURE AND AGENDA

4. READING OF LEGAL NOTICE

The legal notice was read into the record of the public hearing.

5. PRESENTATION ON HEARING SUBJECT.

Attorney Timothy S. Hollister, Shipman & Goodwin, represented the applicant along with Ryan McEvoy, P.E. Milone & MacBroom. A map of the Kurtz/Longo property was displayed on the overhead projection.

Attorney Hollister stated the revised application of Kurtz and Longo was resubmitted, seeking an amendment to the WPCA's Facilities Plan to designate Need Area 13 to be recommended for sewers, and conditional approval of a Feasibility Application to extend sewers to the Kurtz/Longo properties.

According to Attorney Hollister, the application should be granted for the reasons stated in his letter of November 9, 2016 to Chairman Perrotti and the Authority Members.

In 2008-2012 when the WPCA adopted its Facilities Plan, Area 12 was recommended for sewers; the Kurtz/Longo properties (Needs Area 13) were not recommended to be sewerred, but it was recognized that this classification should be reviewed and reconsidered in the future.

The 2012 no-sewer recommendation was based on Area 13 being designated a conservation area on the 2005 State POCD and its Locational Guide Map ("Map"). DEEP took the position that the Map's "Conservation" designation should be regarded as a prohibition on sewer extensions that could be enforced by DEEP's administration of Clean Water Fund grants or loans.

In 2013, the General Assembly adopted a new State POCD, overhauled uses of the Guide Map, overruling DEEP's position and making it clear the Map is not a litmus test for sewer extensions. It was made clear that financial penalties for municipal sewer stations were incorrect, and the Legislature voted and said it was no longer the case.

In the meanwhile, some test pits were done on the Kurtz/Longo properties for with indications for appropriate conditions for a septic system with some lots not clear or inconclusive. The sewer application will be privately financed; it is not state-funded; the combined properties comply with Cheshire's Zoning Regulations for a cluster or open space subdivision, basically smaller lots in return for a substantial dedication of open space within the land to be subdivided. The sewer extension for the subject application can meet all the technical and engineering requirements of the Facilities Plan. There is requirement of a development agreement, full engineering and filing fees. The amount of sewer capacity requested is 4,540 GPD, is minimal, and ample capacity exists.

Sewering through the Kurtz/Longo property has the potential to give the Town and Area 12, if it is decided to extend the sewer, a cost savings of about \$370,000, running across the subject property to Talmadge and Wallingford Roads. Mr. Kurtz is willing to provide an easement for this application, as a condition of approval, to extend sewers to Area 12 to the east.

The Kurtz/Longo land is not a sewer avoidance area; it is not wetlands; it is not un-buildable. Based on the unique combination of factors in the application, Attorney Hollister stated it would be right, regarding Area 13, granting the application is not a decision that will create a precedent to open other Facilities Plan amendments. The property is unique among properties in the Facilities Plan, which could be sewerred in the future. Extension could be conditional upon Planning and Zoning Commission (PZC) approving the subdivision plan that requires sewers.

Attorney Hollister talked about the State POCD and Guide Map. In 2015, the State government had something known as "smart growth", meaning making sure State money was used for development supported by existing infrastructure (water, transportation etc.) To guide the process the State adopted the Locational Guide Map...map of the entire State...in one of eight colors. Four colors indicated growth areas; three colors designated conservation or preservation areas (green); one no

category (white). DEEP started to take the position that State agency actions not only had to be consistent with plans policy, but also the Map. If a municipal WPCA extended sewers to a conservation or preservation area (green color), there was a thread of possible loss of clean water act funds. DEEP was trying to take the Map and make it a statewide sewer map and zoning land development control map. The problem was that DEEP had no authority to do this. The State POCD is only binding on a State agency that spends grants more than \$200,000...it is not applicable to a privately funded sewer extension...and is not applicable to a loan which is the primary financing mechanism by which municipalities access clean water act funds. This was inaccurate from parcel to parcel, and was often done from GIS maps. Because the act was an act of the General Assembly, the only way to amend the designation for a particular parcel was to get an act of the entire General Assembly. This made no sense.

The DEEP's position overlooked the fact that sometimes sewers, by allowing clustering, can be a tool to promote open space and development.

In 2013, the Legislature shut down this practice, revised the map, clarified its purpose to help prioritize their own spending positions. It was not an act to be used to levy penalties on municipal decisions.

On the screen, Attorney Hollister pointed out the Kurtz/Longo properties in the center, in the two red outlines. The lighter color is also a conservation/preservation category, and in the 2012 Facilities Plan, Area 12, Charles Drive and Sir Walter Drive, were green colors recommended for sewers. This area was not in compliance with the DEEP policy. He said the concerns that were raised to shape the 2012 designation no longer exist.

Role of the WPCA - Attorney Hollister stated the role is to lay out, oversee, and manage the public sewer system. It is not to decide which land gets developed as a subdivision, which is the role of the PZC. This why the Authority can approve a sewer extension as feasible, but conditioned upon the decision of the PZC.

Attorney Hollister said Mr. Kurtz and Mr. Longo are pursuing their rights under the zoning regulations, Section 42, which allows for a cluster subdivision, and he pointed out the cluster on the map (blue outline). It is 20 acres and open space as compared to a conventional subdivision with all the lots under private ownership, without any required open space. The subdivision rights being pursued with the subject application are not based on any zone changes or variances...but under the zoning regulations.

Ryan McEvoy, P.E. Milone & MacBroom, talked about the existing conditions of the Kurtz/Longo pieces, and pointed them out on the map displayed. The Longo piece is a rectangular shaped lot on the northwest side; Kurtz piece, 20 acres, is to the east; Sir Walter and Charles Drives are surrounding streets to the east; Talmadge Road is to the west of the Longo piece. The Kurtz/Longo pieces will be one piece as part of the plan.

The site is 25 acres; there is existing sewer fronting on the most northwest part of the parcel; this sewer was installed in the late 1990's as part of an adjacent development. The topography of the site is gentle in nature; the lowest area is adjacent to elevation of 290; the highest elevation is 316. The wetlands corridor bisects the site, running south to north (highlighted in yellow); wetlands continue to the north through existing open space parcel of land owned and maintained by a homeowner's association of the northwest development. There is one existing house on the parcel now (Kurtz lot) served by well and private septic system.

Mr. McEvoy pointed out that the proposal is for a cluster subdivision covering both parcels. The underlay zoning in this area allows for development of a cluster subdivision if certain space criteria are met. The end result is the site can support 20 lots and a cluster subdivision can be pursued under the zoning regulations. A cluster is proposed; 4 lots in the northwest corner of the site; 16 lots (15 new and one existing home) located in the eastern portion of the site. The 16 lots on the east will have a town roadway ending in a cul de sac, served by extension of the existing sewer. There will be a new sewer line to the south along Talmadge Road, turning easterly through the site, crossing the wetlands into the development portion of the Kurtz property. The summary of the proposed sewer (on lot pointed out) will be approximately 2,400 linear feet of sewer, with construction through the western portion of the site will be 8 to 12 feet deep. There would be a 9-foot crossing through the wetlands area; sewers would be extended through the Kurtz property with a deep sewer to serve both of the lots, and provide for extension of the sewer to the neighboring homes to the east on Sir Walter Drive and Charles Drive. It would be 17 feet deep in the area to maximize the ability for future sewer extensions in adjacent neighborhoods. It is estimated, as sewers are proposed on this site, as many as 30 lots in Area 12 could be served by sewer by gravity, and an additional 17 lots could be served by low pressure common forced mains.

The analysis in the packet includes alternatives for Area 12 sewer service, and the Town would have 2,300 feet of sewer constructed south along Talmadge Road, and east along Wallingford Road before getting to the neighborhood. Extreme sewer depths are required to provide gravity sewer as proposed as part of the subject development. The extreme depth could be up to 25 feet in some areas. An estimate of linear foot cost is \$225 to install; \$570,000 for the Town cost to construct the sewers through the existing Town roadway system.

Mr. McEvoy stated the applicant is proposing to develop the sewers, privately funded, through the site, and eventually deliver sewers to Area 12 should the Town choose to extend to this neighborhood in the future. There was discussion in the prior application about the possibility of extending sewers to Area 12 through the Copper Beach area to the north. There are no rights for Copper Beach Drive from Area 12 to the open space.

With regard to a conventional versus cluster subdivision, Mr. McEvoy said the plans provide the difference between the two for lot size and configuration for understanding of the zoning for the two parcels. The cluster development has a reduction in lot size

from 40,000 s.f. to 25,000 s.f. lots, providing sewer and water are available with significant open space area (to the right). That open space area encompasses all the wetlands on the site, adjacent to the open space areas of the Copper Beach Drive area. A conventional subdivision is 40,000 s.f. lots, without any open space included as part of the R-40 residential development.

In summary, Mr. McEvoy stated the applicant feels the development of the site and sewer construction is a feasible option. All lots will be served by sewers. The memo from Town Engineer Gancarz has been reviewed; plans were revised to provide for a sewer along Talmadge Road; any approval granted and the final award of capacity would have to be accompanied by a developer's agreement. It has been demonstrated that Mr. Kurtz has rights to extend utilities through Area 12 to Charles Drive.

Attorney Hollister made it clear, that with regard to sewers for Charles Drive and Sir Walter Drive, that is up to the residents, Town and WPCA. It is not being requested or forced, but being facilitating for some point in the future. The application is not based on the availability or timetable to bring sewers to these areas.

In his conclusion, Attorney Hollister said there are seven (7) points for WPCA to consider with respect to this application.

- Think about a public sewer and systems; a sewer is like a public highway or street that every property owner has a right to use, without overburdening, and pay a fee to use.
- The reason for which the Kurtz/Longo property was not recommended no longer exists.
- The applicant will comply with WPCA regulations and recommendations.
- The applicant will comply with recommendations of the town engineers and the subdivision rules.
- There are safe, sound and practical reasons to amend the Facilities Plan and permit the extension.
- There is no setting of a precedent due to the unique circumstances.
- The agreement can be conditioned upon PZC approval.

Town Attorney Schwartz said he cannot advocate for any position, and his role is to advise the WPCA of the law and why it can or cannot do things. There are two issues...amendment of the WPCA Plan and the subject application. The presentation was for both; the public will give comments on both; and when the public hearing is closed, the WPCA will first debate just on the amendment to the Plan. If approved, the Authority will consider the application.

WPCA Facilities Plan - The general statutes state that the Authority has the right to update the Plan; there is no criteria set; and it can adopt amendments. The statutes state the Authority has the powers to construct, supervise and maintain the sewer system. The hearing(s) on the prior application are not part of the record of this public

hearing. Attorney Schwartz cited his letter, referring to #18 of the applicant's package. In the prior application it stated that, based upon the older version of the statutes, before the 2013 amendment, the statute suggested that if the WPCA plan was inconsistent with the State's plan the Town risked the loss of State funding for other applications. In 2013, there were no classified areas where the State recommended sewerage. There was prioritizing of areas for certain grants. This is important. If an area was a lower priority it would not be inconsistent with the State plan. The subject project is not seeking any State funding...it is privately funded, so there is no issue. If the subject area was not prioritized for sewers it would not affect future funding for projects.

Attorney Schwartz said he wants the WPCA to disregard his prior letter, tab #18. It should not be considered or be concerned of any risk to future funding for Cheshire. There is no risk as of the 2013 amendment. The Authority has broad discretion about adopting an amendment to its Plan. If adopted, the Authority can consider whether to approve the application. Attorney Schwartz mentioned that the WPCA only has the power to consider what is allowed by the General Statutes. It should not consider what would be set before the PZC, i.e. size of the lots, percentage of lots in a subdivision.

The Authority members were informed by Attorney Schwartz that they have 65 days to make a decision on the application from the date of receipt...November 16, 2016. The WPCA meets again on January 25, 2017, and this would require a written approval of extension from the applicant to leave the public hearing open. If the hearing is left open until January 25th, the Authority members can ask the town attorney for advice on issues...the applicant can provide additional information...more information can be put into the record for consideration at the next meeting. If the public hearing is closed, no additional information or public comments can be received at the next meeting...this meeting will only be for deliberation purposes of the WPCA.

Chairman Perrotti noted there was a letter from former member Tim Pelton, and a letter from Chesprocott, and they were made part of the record.

AECOM representative Chelton stated he reviewed the applicant's application, and noted he was involved with the formation of the Facilities Plan. There have been misleading statements in some cases, and incorrect statements on technical differences.

Mr. Chelton cited the following parts of the applicant's packet. Tab #2 - #1 is misleading; #2 and #4 incorrect; #8 is misleading; #9 information he does not agree with; page 4 - 1st paragraph refers to tab #7 but it is not in there; Tab #7 - page 4, 3#, areas zones R20 and R40 would be sewerage on need basis...; page 5 - read section into the record; page 6 - based on the criteria...read into the record; pages 6 and 7, growth areas penalized on the old maps; conservation areas - some recommended for sewers, some were not, and sole purpose based on funding. Tab #2, page 4, para. #2...the statement is wrong; he referred to Section 12; page 5, para. #2, italicized line was read into the record, and is incorrect; page #7 of the application, #1 (top) line #2, read into the record; page 7 (sewerage Section 12 through Clearview), would be future

recommendation for the Town and an easement would be involved. Mr. Chelton said there is no capacity built into the plant for these districts. Tab #2, page #7 implies unique conditions to this development; Mr. Chelton sees nothing unique; regarding right to use a sewer system implies everyone has the right to be connected to sewer system.

6. QUESTIONS AT THE DISCRETION OF THE CHAIR.

7. PROPONENTS AND OPPONENTS STATEMENTS ALTERNATELY EXPRESSED.

Marjorie Narducci, 389 Charles Drive, read a statement into the record, talked about the history of the property as a dairy farm, the \$500,000 WPCA feasibility study to determine future sewer development, her objection to development of the area, neighborhood septic systems are working without problems. She asked about going against the feasibility study when it is not in the interests of the homeowners with properties abutting the subject property.

Donna Famiglietti, 384 Charles Drive, read the petition statement signed by 57 homeowners (37 homes), and submitted the petition to the WPCA.

David Schrumm. 369 Sir Walter Drive resident for 38 years, stated he is comfortable with his septic system and his opposition to the proposed plan for sewers in Area 13. The proposal is in opposition to the Facilities Plan, and the application wants to change the Plan. The petition stated people do not want sewers and do not need them. In August the Chesprocott Director stated there is no compelling reason to sewer Area 12; 70% of the houses have no septic system problems; and failed systems have been replaced without public impact. The residents do not want sewers or the fees. Sewering Area 12 has never been considered by the Town Council or WPCA; there would be pressure on the Town budget; it will not happen unless there is a catastrophic situation. The Town will not sewer Area 12 because there is no money and no inclination, and if a crisis developed the area could be sewered. Mr. Schrumm said the applicant can build houses on his property. Changes to the Locational Guide Map should not be taken lightly; the State must approve the master plan for Cheshire; and it should not be changed without good reasons. The changes in the State PCD make sewer extension possible, but there is no justification for making changes to Area 13. In 2010 there was an in-depth functional analysis. The applicant says it will not be precedent setting for other areas of town, but this is not true. This is not a unique parcel, and spot mapping is not a good idea. Mr. Schrumm recommended continuing the public hearing to receive additional comments and more information.

Donna Famiglietti, 384 Charles Drive, questioned page 2, the red and green outlines on the map.

Mr. McEvoy explained it cites areas of the Town Facilities Plan - yellow is R80; Green is Area 12, where sewer extension is recommended; Pink - sewers are not recommended.

The dark green and red lines are where there has been reported history of excessive pumping of septic tanks or septic failures.

Attorney Hollister clarified that for residents not wanting sewers the applicant is not proposing them. This is up to the Authority, residents and the Town. The applicant is offering extension of sewers but not forcing people to pay the assessment and fees. This application is based on the rights of Mr. Kurtz and Mr. Longo to apply under Section 42 for a cluster subdivision. Mr. Hollister said there is no longer the risk of losing clean water fund money to the Town. Area 13 is identified for revisiting and Area 12 for public sewers.

In the packet submitted by the applicant, Attorney Hollister cited the following sections and pages and briefly commented on them.

Tab #6, page 3; Tab #7, page 4; Tab #8; Tab #9, page 9; Tab #10, page 2 of the exhibits; Tab 4, 1st page.

Attorney Hollister said the understanding of potential loss of State funding was in 2008-2012 and this no longer exists. This is a valid reason to bring the application before the WPCA. The Authority is not authorized to base a sewer decision...if a sewer system can handle what is being proposed from a technical and engineering capacity standpoint, it is not proper for the Authority to make a decision based on septic and test bit data from the application. And, this property could be developed as a conventional subdivision, without the sewer system, but this is not the WPCA's decision.

It is the right of Mr. Kurtz and Mr. Longo to apply for a cluster subdivision, and Attorney Hollister said they are asking the ability to make this decision, and PZC will make the decision on how many houses, size of the lots, etc. The amount of capacity at issue here does not matter because what is being proposed will not overburden the system. The applicant wants to state to PZC that the WPCA is okay with extension of the sewers for a cluster subdivision approval.

David Schrumm said the point of the Facilities Plan was a run up to a \$32 million WWTP project. Getting funding and not jeopardizing funding was an important part of the process for Town Council and WPCA. C&D was an element, not a controlling element. Regarding zoning, Mr. Schrumm said it was in the packet, and more houses and more cluster was raised by the applicant.

Robert Geisler, 352 Charles Drive, commented on the map, and the statement of 28% free space if with a cluster; part of this area is wetlands and houses shown on the 2nd map cannot be built. The applicant will have open space one way or another.

Chairman Perrotti recessed the public hearing at 8:30 p.m.; The WPCA reconvened at 8:42 p.m.

Pat Lucash, 318 Sir Walter Drive, said she took notes during the public hearing, and noted Attorney Hollister said the basis of the application is cluster housing that requires sewers and they are willing to pay for them. This should have no bearing on the

application; cluster housing requires sewers and they are willing to pay for them is the argument to be presented. Area 12 should have no bearing on the factors.

AECOM representative Chelton responded to Attorney Hollister's comments. He said there is no disagreement that it was acknowledged, there was a PCD in existence at the time, and State DEEP representative came to WPCA, discussed the potential impact if the Town took certain actions not in accord with the Plan. He stated disagreement with the application and opening comments, Tab #2, page 5...and Mr. Chelton read the statement into the record. He cannot find any documentation stating the primary reason Area 13 was not recommended for sewers was due to the potential risk of loss of State funding. He cited Tab 10, pages 5-4 which clearly stated what criteria is used whether or not an area is recommended for sewerage or not...and he knows this well because he was one of the authors of the Facility Plan. He read the section into the record. This is where exception is taken to the way this application was prepared.

Attorney Hollister pointed out that in Cheshire and the State if a WPCA thought that extending the sewer to a particular property (green on the State map) was even considered there was risk of loss of State funding. In this particular case it did not get to the analysis of zoning and lot sizes etc. and if it did and was decided all the factors on the land were sewerable (green on the map) State funding could be put in. The State funding system was the primary motivator for not sewerage certain parcels. He said Area 12 is a conservation area.

Mr. Chelton stated this is incorrect.

Mr. Scannell stated in his 10 years on the Authority every time a decision was made, it was based on funding.

Chairman Perrotti stated the public hearing would be kept open; it will be on the agenda of January 25, 2017; the applicant will have to provide a written approval for extension of the public hearing. Authority members cannot discuss this matter with anyone or each other.

8. REBUTTAL AT THE DISCRETION OF THE CHAIR.

9. ADJOURNMENT

Chairman Perrotti adjourned the public hearing at 8:45 p.m.

Attest:

Marilyn W. Milton, Clerk